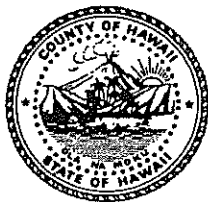


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL
7000 0600 0024 2904 6648

DEC 2 6 2000

R. Ben Tsukazaki, Esq.
Tsukazaki Yeh & Moore
100 Pauahi Street, Suite 204
Hilo, HI 96720

Dear Mr. Tsukazaki:

Special Permit Application (SPP 00-036)

Applicant: Vipassana Hawaii

Request: Allow for the Establishment of the Hawaii Insight Mediation Center

Tax Map Key: 5-3-7:Portion of 1

The Planning Commission at its duly held public hearing on December 1, 2000, voted to approve the above-referenced application. Special Permit No. 1091 is hereby issued for the establishment of the Hawaii Insight Meditation Center on 15 acres of land within the State Land Use Agricultural District. The project area is approximately 2,000 feet makai of Akoni Pule Highway, and adjacent to (west) Halawa Gulch, Napapaa, North Kohala, Hawaii.

Approval of this request is based on the following:

In considering a Special Permit for any proposed use, Rule 6 of the Planning Commission relating to Special Permits require that such action conform to the following guidelines:

- a. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- b. The desired use shall not adversely affect surrounding properties;
- c. Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;

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DEC 2 6 2000

- d. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
 - e. The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
-
- f. The proposed use will not substantially alter or change the essential character of the land and the present use; and
 - g. The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

In addition to the guidelines detailed above, the Planning Commission must also find that the proposed use:

- a. Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and
- b. Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

While a proposed use must meet all of these criteria for approval by the Planning Commission, a denial may be made upon a finding of conflict with any of those criteria.

It is felt that the granting of this particular request at this particular location would be consistent with the objectives to be sought to be accomplished by the Land Use Law and Regulations, the County General Plan and Community Development Plans. The granting of this request will promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. In recognizing that land within the Agricultural Districts may not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses may not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District. Goals specified within the General Plan states that the County shall "Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments" and "Identify, protect and maintain important agriculture lands on the island of Hawaii." Based on the site plan provided

within the applicant's submittal and identified as Figure 3.2-LSB's Detailed Land Classification Map, the majority of the project site is situated on lands that maintain an overall master productivity rating of "B" or "Good" according to the Land Study Bureau's, Detailed Land Classification-Island of Hawaii (1965). The Agricultural Lands of Importance to the State of Hawaii (ALISH) maps identify the majority of lands within the project site as "Prime" agricultural lands with the remaining balance of the project site identified as "Other Important Agricultural Lands." The location of "Prime" agricultural lands correlates with the location of Class B lands. The documents described above identify the quality of soils located within the project site, which represent soils that have the highest agricultural productivity rating on the island. The proposed meditation center, if approved, will integrate a variety of agricultural activities throughout the project site as well as within its operations and programs. More specifically, the applicant will establish fruit and vegetable gardens and orchards within the project site as detailed by the applicant's letters to the Planning Commission dated November 22, 2000 and November 27, 2000. The applicant anticipates that "...the orchard and other diversified agricultural activities will eventually be carried out at a commercial scale beyond that which is related to the existing macadamia orchard." While staff of the meditation center will cultivate and maintain the gardens and orchards, participants of the retreat will also assist in the cultivation and maintenance of the gardens and orchards on a daily basis, usually in the mornings, as part of the normal retreat regimen. A work-study program will also involve retreat participants in longer periods of field work (3 to 5 hours) as work credits against the unpaid balance of tuition. The applicant has demonstrated its commitment to conduct agricultural activities in a manner consistent with the objectives of the State Land Use Law and General Plan by blending together two distinct uses that will mutually benefit each other.

The project site is currently being utilized as pasture. While pasturage is a form of agricultural use, it can be argued that such use is not the best use of the County's limited inventory of important agricultural lands. While approval of this Special Permit will introduce a non-agricultural use into the area, the integration of agricultural activities as part of its project site, operations and programs will, in the end, place these important agricultural lands into more intensive agricultural use than its current use in pasture.

To ensure that the level of agricultural activity occurring within the project site is consistent with the objectives to be accomplished by the State Land Use Law and the General Plan, the applicant will be required to prepare an agricultural plan that incorporates, at a minimum, the details of agricultural use included within the applicant's letters to the Planning Commission dated November 22, 2000 and November 27, 2000.

The North Kohala Community Development Plan, adopted in 1984 by Planning Commission Resolution No. 2-84, "Encourage the development of conference and retreat

facilities which capitalize on North Kohala's agricultural and historical resources." As previously mentioned, the proposed project will incorporate various agricultural activities within the project site and in its operations. This "blending" of a meditation (retreat) facility and agricultural activities is consistent with this specific recommendation of the North Kohala Community Development Plan.

Finally, approval of the subject request will be consistent with the following goals and policies of the Land Use and Economic Elements of the General Plan:

Land Use Element

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- Protect and encourage the intensive utilization of the County's important agricultural lands.

Economic Element

- The County shall assist the expansion of the agricultural industry, especially diversified agriculture, through the protection of important agricultural lands, capital improvements and other programs, and continued cooperation with appropriate State and Federal agencies.
- The County shall strive for diversity and stability in its economic system.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

The desired use will not adversely affect the surrounding properties. The project site, consisting of 15 acres, is situated within a larger parcel consisting of approximately 695 acres. Structures that will house the various activities associated with the proposed meditation center will be situated at least 1,000 feet from the nearest residence. We feel that this distance is adequate to minimize any adverse noise impacts which may be generated by the proposed use. The very nature of the proposed use is expected to minimize the impact of noise and activities upon surrounding properties. According to the application, "Noise generated by the activities occurring within the project site should be minimal due to the nature of this meditation center complex which involves silence practiced throughout the retreat and activities conducted." While noise will be generated by certain mechanical equipment such as air conditioners, fans and pumps, the location of the project site at least 1,000 feet from adjoining residences should adequately minimize

any potential noise impacts. Short term construction activities during the development phase of the proposed project may result in noise, dust and other construction-related impacts, but these are expected to be short-lived and minimized with the application of standard construction practices. According to the application, noise from construction activities are regulated by the State Department of Health's Administrative Rules. The applicant is required to comply with these regulations.

Visual impacts from the Akoni Pule Highway are also expected to be minimal due to the heavy vegetation that exists makai of the highway that does not afford a viewplane to the coast line.

This approval recommendation also includes a condition of approval that will allow the Planning Director to suspend activities permitted by the Special Permit should the applicant fail to comply with conditions of this approval or is unable to resolve any complaint relating to interference or nuisance upon the surrounding community. Should the applicant fail to comply with the conditions of approval or has caused any unreasonable nuisance on the surrounding community, the permit may be revoked by the Planning Commission.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, police and fire protection. Access to the project site from the Akoni Pule Highway will be provided along a privately owned roadway for a distance of approximately 300 feet. The access road then connects with a former cane haul road commonly referred to as Pratt Road, also a privately owned roadway and remains unpaved. Applicant is proposing that the paving of the access road entrance and the shoulders of the Akoni Pule Highway be done to improve ingress and egress onto this private roadway. The applicant will coordinate with the Department of Transportation to address any traffic concerns. Traffic impact anticipated by the applicant is 20 vehicles entering or leaving the project site onto the Akoni Pule Highway during peak hours. The applicant anticipates that this small number of vehicles should have minimal or minor impact upon traffic flow in this area. The applicant also found that sight distance at this intersection meets Department of Transportation standards. The State Department of Transportation did not express any concerns regarding the project's access road connection with the Akoni Pule Highway, a State-maintained roadway. The Department of Public Works did not express any concerns regarding the project's use of Pratt Road, a private roadway.

Water is available to service a portion of the proposed project. The applicant will connect its water system to the County's 4-inch water line located along the Akoni Pule Highway. The applicant intends to install a 2-inch water line throughout the proposed project site to service its various facilities and complexes. The Department of Water

Supply, by memorandum dated November 29, 2000, has indicated that a sufficient allotment of water units will be made available to support the proposed meditation center. However, they recommend that the applicant consult with the Fire Department to address fire-flow needs of the project since the existing County waterline along Akoni Pule Highway cannot provide the necessary fire flow. This requirement will be made a condition of this approval recommendation.

The applicant will utilize septic systems and leach fields to accommodate wastewater generated by the proposed project in accordance with Department of Health requirements. The applicant is also considering alternative systems and technologies to treat its wastewater. The final system to be selected will conform to the applicable requirements of the State Department of Health.

All other essential public utilities and facilities are or will be made available to support the proposed project.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The State and the County, through its land use laws, have the fiduciary responsibility of protecting its important agricultural lands located in limited quantities throughout the state. However, the protection of these lands cannot be accomplished without consideration of non-agricultural uses that, when combined, creates a mutually beneficial relationship that enhances the ability of an entity to utilize these important agricultural lands in a feasible manner. Extensive, plantation-style agriculture is slowly becoming less of an economic factor on this island. Smaller acreages of land are being cultivated by smaller entities. Many large landowners may no longer have the resources necessary to conduct intensive agricultural activities over vast expanses of land. The County must consider various non-agricultural options that could have a secondary, beneficial effect upon a landowner's ability to cultivate their land. The project site provides an excellent case-in-point. The project site and its surrounding lands are owned by a large landowner that is currently utilizing the project site for pasture; a type of use that does not maximize the use of the County's important agricultural lands. The applicant, on the other hand, will establish vegetable and fruit gardens and orchards within the project site that will eventually reach commercial scale. Its participants as well as staff will cultivate and maintain these gardens and orchards as part of its meditation center operations. In the final analysis, approval of the proposed meditation center will foster a more intensive use of important agricultural lands within the project site than the pasture use currently being conducted.

The land on which the proposed use is sought is unsuited for the uses permitted within the district. While this criteria for approval of a Special Permit seeks to utilize "unsuitable" agricultural lands for non-agricultural types of uses, we feel that certain non-

agricultural uses may be appropriate on lands suitable for agriculture. As discussed in the previous paragraph, the department is seeking a balance of co-existing agricultural and non-agricultural uses that are mutually beneficial to each other. The current economic climate within the agriculture industry emphasizes the importance of seeking innovative means to sustain itself. The applicant's proposal is one such innovative approach to enhancing the cultivation and productivity of the lands upon which it will be established.

The use will not substantially alter or change the essential character of the land and the present use. With the integration of agricultural activities within its operations, the proposed meditation center will not significantly change the fundamental agricultural character of the project site or the surrounding area. The design of the meditation center will promote its operation as a "retreat" by maintaining the height of various structures to less than 45 feet and residential structures to less than 35 feet. The various structures will be distributed throughout the project site that will promote a "campus" feel rather than clustering structures as a "complex." To ensure the preservation of the agricultural character of the project site and surrounding area, it is recommended that the proposed project be constructed and operated in a manner that is substantially representative of plans and details contained within the Special Permit application, including its hours of operation from 5:00 a.m. to 10:00 p.m., daily.

As detailed within the Planning Director's Background Report to the Planning Commission dated October 30, 2000, an archaeological reconnaissance survey of the project site was conducted by the applicant. The survey did not locate any archaeological features or sites within the project site. Historic features were located within the adjacent Halelua and Halawa Gulches. In light of the fact that the project site is situated on 15 acres of land between these two gulches and, therefore, will not have an adverse impact upon historical and cultural resources, the Planning Director concluded that "The proposed development would have no effect upon historic sites provided that activities are restricted to the area between these two gulches." In addition, the information contained in the record, including the Planning Commission's December 1, 2000 public hearing on the subject application, does not indicate the existence of traditional and customary native Hawaiian rights within the 15-acre project site which has historically been used for sugar cane cultivation and pasturage. Information and testimony submitted by the applicant, derived from documentary research, an archaeological study, and conversations with the community, supports this finding. In the absence of any testimony or other information to the contrary and in consideration of the Planning Director's conclusion that the proposed development will not have a significant adverse impact upon historic sites, it is determined that valued cultural, historical or natural resources were not identified as being located within the project site and that approval of the proposed project will not have a significant adverse impact upon these resources or to traditional and customary native Hawaiian rights.

Based on the above considerations, it is determined that the establishment of the Hawaii Insight Meditation Center at this particular location would promote the effectiveness and objectives of the State Land Use Law. For these reasons, the Planning Commission hereby approves the request for a Special Permit.

Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special Permit.

1. The applicants, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The meditation center shall be established within five (5) years from the effective date of this permit. Prior to establishing this use, the applicant shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code, Sections 25-2-71(f), 25-2-72, 25-2-76 and 25-2-77. Plans shall identify all proposed structures, parking areas, access roadways and landscaping associated with the proposed use. The applicant shall notify the Planning Department, in writing, of the completion of required improvements prior to commencing operation of the proposed meditation center.
3. The construction of the meditation center and the operation of all of its related facilities and activities shall be conducted in a manner that is substantially representative of plans and details as contained with the County of Hawaii Special Permit for Hawaii Insight Meditation Center dated August 2000.
4. Operation of the meditation center shall be limited to the hours between 5:00 a.m. and 10:00 p.m., daily. Operation of the meditation center, as defined, shall not include activities that include or are directly supportive of the residential buildings, guest cottages, family housing, staff and teacher housing and tent platforms.
5. The applicant shall prepare an agricultural plan for the project site prior to the issuance of a certificate of occupancy for any portion of the proposed meditation center. The agricultural plan shall include, at a minimum, the details of agricultural activity as defined in the applicant's letters to the Planning Commission dated November 22, 2000 and November 27, 2000.

6. The applicant, in consultation with the Fire Department, shall provide for the fire-flow needs of the proposed project.
7. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
8. Comply with all other applicable laws, rules, regulations and requirements of the affected government agencies for the proposed use including, but not limited to, those of the Department of Water Supply and Fire Department.
9. If the applicant fails to comply with the conditions of approval or causes nuisance complaint(s) and is unable to resolve them with the surrounding community, the Planning Director shall investigate and, if necessary, suspend the permit if the applicant has not complied with the conditions of approval of this permit and if the applicant continues to create an unreasonable nuisance to the surrounding community. The Planning Director shall then refer the matter to the Planning Commission to revoke the permit. Upon appropriate findings by the Planning Commission, if the applicants fail to comply with the conditions of approval or has caused any unreasonable nuisance on the surrounding community, the permit may be revoked.
10. An annual progress report shall be submitted to the Planning Department prior to each anniversary date of the approval of this permit. The report shall include, but not be limited to, the status of the approved development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
11. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.

R. Ben Tsukazaki, Esq.

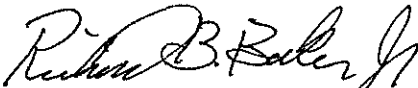
Page 10

- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact Daryn Arai of the Planning Department West Hawaii Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,



Richard B. Baker, Jr., Chairman
Planning Commission

Lvipassanaspp00-036PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Kazu Hayashida, Director/DOT-Highways, Honolulu
Mr. Steven Smith

00606



County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

JUN 31 2013

Ms. Michele McDonald
Vipassana Hawai'i
P.O. Box 551681
Kapa'au, HI 96755

Dear Ms. McDonald:

Special Permit 1091 (Docket No. 00-000036)

Applicant: Vipassana Hawai'i

Request: Amendment to Condition No. 2 of SPP No. 1091
(Complete Establishment)

Tax Map Key: 5-3-007:por. 043 (formerly 5-3-007:por. 001)

The Leeward Planning Commission, at its duly held public hearing on June 20, 2013, voted to approve the above-referenced request for an amendment to Condition No. 2 (establish meditation center) of Special Permit No. 1091, which allowed the establishment of the Hawai'i Insight Meditation Center on 15 acres of land situated in the State Land Use Agricultural District. The project area is approximately 2,000 feet makai of Akoni Pule Highway and adjacent to (west of) Halawa Gulch, 2,000 feet makai of Akoni Pule Highway and adjacent to (west of) Halawa Gulch, Napapa'a, North Kohala, Hawai'i.

Approval of the request is based on the following:

The applicant has submitted a request for a five-year extension of time to comply with Condition No. 2 (establish meditation center) of Special Permit No. 1091. The condition states: "The meditation center shall be established within five (5) years from the effective date of this permit. Prior to establishing this use, the applicant shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code Sections 25-2-71(f), 25-2-72, 25-2-76 and 25-2-77. Plans shall identify all proposed structures, parking areas, access roadways and landscaping associated with the proposed use. The applicant

Hawai'i County is an Equal Opportunity Provider and Employer

shall notify the Planning Department, in writing, of the completion of required improvements prior to commencing operation of the proposed meditation center.”

Special Permit No. 1091 was initially approved on December 1, 2000 for the establishment of the Hawai'i Insight Meditation Center and related improvements. More specifically, the project as described in the original application, included the following:

- Meditation hall complex
- Administration building
- Kitchen and dining room
- Maintenance facility/other structures
- Forty (40) guest cottages with four (4) bathrooms
- Residence halls – three (3) single-story buildings, each with twenty (20) single occupant rooms; six (6) bathrooms, two (2) per building; storage and mechanical rooms
- Family housing and general purpose building – four (4) rooms
- Tent platforms – twenty (20) to forty (40) tent platforms for guest using tents during their stay
- Teacher housing.

However, after Special Permit No. 1091 was approved, due to several court actions challenging the legality of the permit (refer to Section III, B-J in the request letter), the project was delayed. In the absence of any court challenges, the applicant would have had to complete construction in compliance with Condition No. 2 by December 1, 2005.

The applicant seeks an additional extension of time until July 1, 2018 to comply with Condition No. 2 due to:

- delays from the court process; the consolidation/resubdivision of the property
- global recession, lending market crisis, and the housing sector decline
- decrease in capital pledges by donors
- scaling down of the project
- securing the conservation easement to preserve prime agricultural land - currently awaiting approval from the Governor.

Final Plan Approval (FPA) was granted on November 30, 2011 that reflected a project that was significantly reduced in size, from an original facility that would accommodate 100 guests to a facility anticipated to accommodate 40 guests, with support facilities sized to complement the reduced guest accommodations.

Granting of the time extension request would not be contrary to the original reasons for the granting of the permit. The use would continue to be an unusual and reasonable use of lands situated within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended. No complaints were formally received relative to the request for the time extension. As stated in the original permit, the proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection.

Approval of this request would not be contrary to the General Plan or the Zoning Code. Since the administrative extension of time to the Special Permit was approved in 2008, all land use designations have remained the same. The State Land Use designation is Agricultural, County zoning for the property is A-20a, and the GP LUPAG map is Intensive Agriculture. The North Kohala CDP recommends the project area be retained for agricultural uses with a minimum lot size of twenty acres.

The amendment to Condition No. 2 would not be contrary to the General Plan or the Zoning Code. The request would be consistent with the Land Use Element of the General Plan, which states "Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment." The granting of this request at this particular location will provide a convenient service to the growing community. Although the Department of Transportation (DOT) had no objections to the request for the extension of time, they did recommend that the applicant provide various improvements to the Akoni Pule Highway intersection and access driveway as well as prepare a traffic impact analysis (TIAR) report. The County recently paved the Kapania Bay access road connection with the Akoni Pule Highway, essentially addressing this recommendation by the State DOT. Regarding the recommendation that a TIAR be prepared, we hold the position that the preparation of a TIAR is not warranted when the scope of the project will not exceed what was originally approved in 2000 when the State DOT declared that the proposed project was not anticipated to have a significant impact upon the Akoni Pule Highway.

Based on the above, the request to amend Condition No. 2 of Special Permit No. 1091 is hereby approved. Approval of this request is subject to the following conditions (new material is underscored and deleted material is bracketed and struck through):

1. The applicants, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The meditation center shall be established within five (5) years from the effective date of the amendment to this permit. Prior to establishing this use, the applicant

shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code, Sections 25-2-71(f), 25-2-72, 25-2-76 and 25-2-77. Plans shall identify all proposed structures, parking areas, access roadways and landscaping associated with the proposed use. The applicant shall notify the Planning Department, in writing, of the completion of required improvements prior to commencing operation of the proposed meditation center.

3. The construction of the meditation center and the operation of all of its related facilities and activities shall be conducted in a manner that is substantially representative of plans and details as contained with the County of Hawai'i Special Permit for Hawaii Insight Meditation Center dated August 2000.
4. Operation of the meditation center shall be limited to the hours between 5:00 a.m. and 10:00 p.m., daily. Operation of the meditation center, as defined, shall not include activities that include or are directly supportive of the residential buildings, guest cottages, family housing, staff and teacher housing and tent platforms.
5. The applicant shall prepare an agricultural plan for the project site prior to the issuance of a certificate of occupancy for any portion of the proposed meditation center. The agricultural plan shall include, at a minimum, the details of agricultural activity as defined in the applicant's letters to the Planning Commission dated November 22, 2000 and November 27, 2000.
6. The applicant, in consultation with the Fire Department, shall provide for the fire-flow needs of the proposed project.
7. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
8. Comply with all other applicable laws, rules, regulations and requirements of the affected government agencies for the proposed use including, but not limited to, those of the Department of Water Supply and Fire Department.

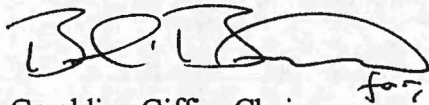
9. If the applicant fails to comply with the conditions of approval or causes nuisance complaint(s) and is unable to resolve them with the surrounding community, the Planning Director shall investigate and, if necessary, suspend the permit if the applicant has not complied with the conditions of approval of this permit and if the applicant continues to create an unreasonable nuisance to the surrounding community. The Planning Director shall then refer the matter to the Planning Commission to revoke the permit. Upon appropriate findings by the Planning Commission, if the applicants fail to comply with the conditions of approval or has caused any unreasonable nuisance on the surrounding community, the permit may be revoked.
10. An annual progress report shall be submitted to the Planning Department prior to each anniversary date of the approval of this permit. The report shall include, but not be limited to, the status of the approved development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
- ~~11. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. Non performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).]~~
11. If the applicant should require an additional extension of time, the applicant shall submit their request to the Planning Commission for appropriate action. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

Ms. Michele McDonald
Vipassana Hawai'i
Page 6

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288, ext. 8142.

Sincerely,

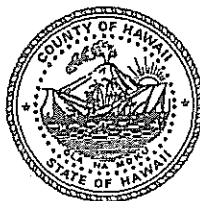


Geraldine Giffin, Chairman
Leeward Planning Commission

Lvipassanaspp1091 pc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
State Department of Transportation
State DLNR-HPD
Mr. Gilbert Bailado ✓

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

November 8, 2005

Michael Moore, Esq
Tsukazaki, Yeh & Moore
85 W. Lanikaula Street
Hilo, HI 96720

Dear Mr. Moore:

Special Permit No. 1091

Applicant: Vipassana Hawaii

Request: Allow for the Establishment of the Hawaii Insight Meditation Center

Subject: Annual Progress Report and Time Extension Request for Condition No. 2

Tax Map Key: 5-3-7:portion of 1

This is in response to your letter dated November 1, 2005 requesting a time extension to comply with Condition No. 2 (establishment of use) of Special Permit No. 1091 and the submittal of the annual progress report in compliance with Condition 10.

We acknowledge receipt of the annual progress report and based on the reasons stated within regarding the delays caused by ongoing litigation, the Planning Director has determined that non-performance is beyond the control of the applicants and that the granting of a time extension would not be contrary to the General Plan, Zoning Code or original reasons for granting the request. The Planning Director hereby grants a five-year time extension until **December 1, 2010** to comply with Condition No. 2.

If you have questions or require further information, please feel free to contact Jeff Darrow of this office at 961-8288.

Sincerely,


CHRISTOPHER J. YUEN

Planning Director

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cc w/letter: Planning Commission
Planning Department-Kona

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NOV 8 2005

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November 1, 2005

Christopher J. Yuen, Planning Director
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Re: SPECIAL PERMIT NO. 1091 (SPP 00-036)
Applicant: VIPASSANA HAWAII
Request: Allow for the Establishment of the Hawaii Insight Meditation Center
Tax Map Key: (3) 5-3-007:portion of 1

Dear Mr. Yuen:

We submit herein an annual status report on behalf of Vipassana Hawaii, Applicant in the above-referenced matter, together with a request for an extension of the five (5) year time period for the establishment of the proposed meditation center as set forth in Condition 2 of the Special Permit. Special Permit No. 1091, was approved on December 1, 2000, for the establishment of the Hawaii Insight Meditation Center on 15 acres of land within the State Land Use Agricultural District. The project area is approximately 2,000 feet makai of Akoni Pule Highway and adjacent to Halawa Gulch, Napapaa, North Kohala, Hawaii. Condition No. 2 of the Special Permit provides in relevant part that "[t]he meditation center shall be established within five (5) years from the effective date of this permit."

General Status

Project development has been delayed because of litigation relating to the Planning Commission's issuance of Special Permit No. 1091 and relating to the subdivision of the project area.

On January 26, 2001, an action was filed in Third Circuit Court under Civil No. 01-1-0037 which appealed the final determination by the Planning Commission in its decision issued on December 26, 2000. On July 10, 2001, the Third Circuit Court entered its final

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judgment in favor of the Planning Commission, Planning Department and Applicant affirming Special Permit No. 1091.

Subsequently, a notice of appeal to the Hawaii Supreme Court was filed on August 7, 2001. Briefing on this appeal was completed in January, 2002. The Hawaii Intermediate Court of Appeals entered an *Order Dismissing Appeal for Lack of Jurisdiction* on July 22, 2003. On August 13, 2003, an application for a writ of certiorari was filed with the Hawaii Supreme Court. On August 27, 2003 the Hawaii Supreme Court entered an *Order Denying Application for Writ of Certiorari*. The entry of this order concluded the litigation in favor of the Planning Commission and the Applicant and as to the validity of the Special Permit.

The subject property has been included in an application by Surety Kohala Corporation ("Surety") to obtain a consolidation and resubdivision of the subject property and other adjacent lands into 16 lots (Subdivision No. 2000-56). Tentative subdivision approval was issued with a condition requiring the dedication of public access to the shoreline. This requirement was appealed by Surety, and the matter was subsequently resolved by a settlement agreement dated April 2, 2002. In 2004, Final Subdivision Approval was granted, but this was appealed by a third-party, and a contested case was held, following which the Board of Appeals affirmed the Planning Director's decision. Land Court proceedings commenced in 2004. In August 2005 Surety filed an amended and restated petition with the Land Court for the consolidation and resubdivision of the land court portions of the subdivision. The order of the Land Court approving same is anticipated in the very near future. Following the entry of the Land Court Order, pursuant to their agreement Surety and the Applicant shall have ninety days to finalize the Applicant's purchase of its reconfigured parcels.

As set forth above, there have been a variety of legal and administrative matters which have delayed the establishment of the Meditation Center within the five years following issuance of the Special Permit. The Applicant remains committed to the project and is eager to proceed with its establishment. With the entry of the Land Court Order and the conveyance of the property, the Applicant intends to proceed with its establishment in a diligent manner.

Based on the foregoing, the Applicant respectfully requests an extension of the five year time period for the establishment of the Meditation Center as set forth in Condition No. 2 of the Special Permit.

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Please contact me if you should need further information regarding these matters.

Very truly yours,

TSUKAZAKI YEH & MOORE,
A Limited Liability Law Company

A handwritten signature in black ink, appearing to read 'M. Moore', with a long horizontal flourish extending to the right.

MICHAEL MOORE

xc: Vipassana Hawaii